

Headquarters U. S. Air Force

Integrity - Service - Excellence

Headquarters Air Force FOIA Administrative Brief



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HAF/IMII



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The FOIA Administrative Process

- Receipt of a written FOIA request
- Direct/Task to search for responsive records
- Coordinate multiple reviews
- Release determination made and response letter issued
- Right to file an administrative appeal
- Right to file a FOIA lawsuit in federal district court





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Summary of Tasked Office's Responsibilities

- Conduct search
 - “Records Found”
 - “No Record”
 - Recommend Offices with Equities
 - Records inactive staged at the National Records Center
 - Records created/controlled by contractors under AF contract (i.e. Rand Corp)
- Review records
 - Deny in full (requires exemption/IDA approval)
 - Deny in part (“partial”—requires exemption/ IDA approval)
 - Grant in full (no IDA involvement)
 - Recommend consultations/referrals



Summary of Tasked Office's Responsibilities Con't

- Complete DD Form 2086 and list of documents
 - If cost exceed the amount the requester has agreed to pay submit a estimated DD Form 2086 to HAF/IMII, FOIA office within one day of receipt of the FOIA task
- Recognize that the FOIA is a statute
 - All actions have legal implications
 - All case documents are legal documents



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The Administrative Process

- Receipt of a FOIA request
 - 20 day statutory time limit to make a release determination
 - What is scope of request? What is being requested?
 - Agency records (including electronic records)
 - Where to search?
- Request extension if you cannot meet 20-day time frame



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An Adequate Search

- Agencies must undertake a search that is “reasonably calculated to uncover all relevant documents.”
- Must search everywhere it is reasonably likely responsive records exist
- No records vs. cannot locate

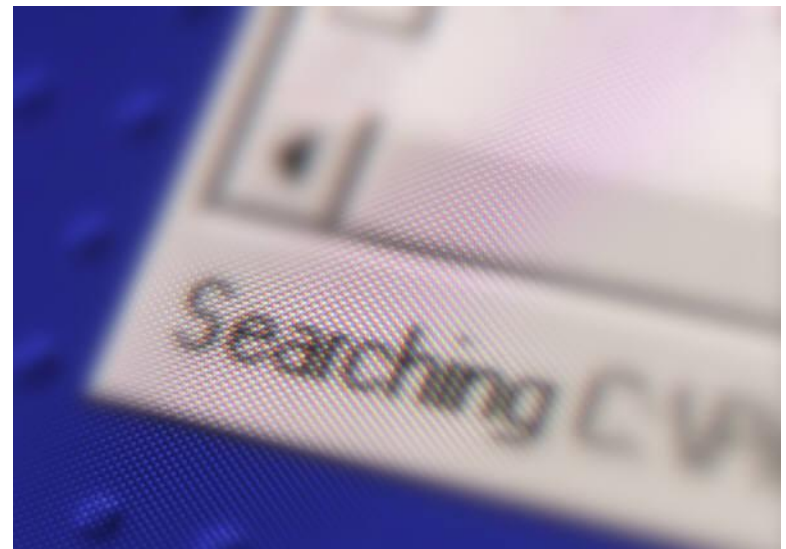




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Conducting A Search

- Best practice: Keep a record of where you searched and the search terms used to conduct search.
- Think outside the box—should we have responsive records?
- If not, who would?
- Electronic search?





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Records Found



- Are located records responsive?
- Are there duplicates? Is marginalia distinguishing?
- Count the number of pages/number of documents located
- Did you locate records responsive to each item listed in request?
- Note “no records” for those items for which you found no records





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Reviewing Responsive Records

- What exemptions apply?
- Segregate non-exempt information
- Should another office review the records?
- Are consultations and/or referrals required?
- Is research needed to determine whether material is public?





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Reviewing Documents

- Make a copy of the responsive documents.
- Count the number of pages, not documents.
- Review each page and bracket exempt information that should be withheld.
- DO NOT mark original documents.
- Cite all exemptions that you think apply to the exempt information.





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Reviewing Documents

Duty to segregate: The FOIA requires that agencies review each document, line-by-line, to determine if there is non-exempt information that can be segregated out for release. 5 U.S.C. 552(b).



Courts are especially interested that agencies comply with this requirement



Reviewing Documents

Must identify other agency equities contained in your documents:

- Referrals--your file contains documents that originated with another DoD component/ command, or another federal agency
- Consultation--your file contains documents that contain information that originated with another DoD component/command, or another federal agency



Important Notes about Reviewing Records

- Did you take into account “Segregability”?
- Are you “re-classifying” Unclassified information?
 - OCA will make determination to declassify information
- Are you “rubber stamping” or discerning releasability?
- Did you bracket exempted material on the records and provide a clean copy for internal use?
- Did you note page/document count if records are “denied in full”?



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Release Determination



- Your release determinations are communicated to the requester in response letters
- Must cite statutory authority (an exemption) to withhold information
- Legal ramifications
- Right to appeal release determinations, including “no record” responses



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Administrative Appeals

The FOIA provides the requester with the right “to appeal to the head of the agency any adverse determination.” 5 U.S.C. 552(6)(A)(i).

- No statutory requirements for language of appeal
- All appeals include the adequacy of the search
- Must file an administrative appeal before filing a lawsuit in federal district court
- Can file an appeal from the failure to respond within 20 days



Administrative Appeals

- Appeals are review by appellate authority
- Review of administrative record—keep good notes
- After an appeal is filed, requester can proceed to court





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Who's Who in FOIA

- KNOW YOUR POINTS OF CONTACT
 - HAF FOIA Office: Carolyn Price, John Espinal , Penny Jackson, TSgt Frank Jackson, MSgt Floydell Jackson, Naida Rhoades, Joanne McLean , and Della Macias
 - HAF FOIA COP Site
(<https://www.dmy.af.mil/afknprod/ASPs/CoP/OpenCoP.asp?Filter=AF-OP-00-02>)
 - Your legal team
 - Your Records Manager
 - Your IT professionals

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QUESTIONS



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